Supreme Court, U.S.
FILED
04 26 JUN 29 2004
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

H. BEATTY CHADWICK,

Petitioner,

v.

JOHN DOUGLAS CAULFIELD, Warden,
George W. Hill Correctional Facility,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

H. BEATTY CHADWICK
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QUESTIONS PRESENTED

1. Whether a Certificate of Appealability should be granted to review the following questions:

a. Whether a habeas corpus petition is second or successive where it raises the claim, as did an earlier petition, that the state court factfinding was not reasonably supported by the record, and the court relied upon the presumption of correctness of the state court factfinding contained in 28 U.S.C. § 2254(e)(1) but granted relief on other claims, subsequently reversed in an earlier petition?

b. Whether a habeas corpus petition is second or successive where, although raised in an earlier petition, the court in the earlier proceeding did not mention the Sixth Amendment claim asserted in the instant proceeding and granted relief on other grounds, subsequently reversed?

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

H. Beatty Chadwick

John Douglas Caulfield, Warden,
George W. Hill Correctional Facility

The Attorney General of the
State of Pennsylvania*

* The Attorney General notified the District Court that he had no interest in the case and did not participate in the proceedings below.

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PETITION FOR A WRIT OF CERTIORARI

H. Beatty Chadwick, the Petitioner, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled case on May 25, 2004 which denied Petitioner's request for a Certificate of Appealability to obtain review of a dismissal of a petition for Writ of Habeas Corpus.

OPINIONS BELOW

The order, dated May 25, 2004 of the United States Court of Appeals for the Third Circuit, whose judgment is herein sought to be reviewed, is unpublished and is attached as Appendix A. The opinion of the District Court for the Eastern District of Pennsylvania dated October 20, 2003 which dismissed Petitioner's petition for Writ of Habeas Corpus is unpublished and is attached as Appendix B, followed by the unpublished order of the District Court dated October 30, 2003 which denied Petitioner's motion for reconsideration as Appendix C, and the unpublished order of the District Court dated December 19, 2003 which denied a Certificate of Appealability, as Appendix D.

JURISDICTION

Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

This case involves the following provisions of the United States Constitution:

Amendment Six:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment Fourteen, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction of the United States, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Also involved are the following statutory provisions:

> 28 U.S.C. § 2244(b)(1). A claim presented in a second or successive habeas corpus application under Section 2254 that was presented on a prior application shall be dismissed.

28 U.S.C. § 2254(d). An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)(1) In a proceeding instituted by an application for a Writ of Habeas Corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

STATEMENT OF THE CASE

Petitioner H. Beatty Chadwick has been imprisoned since April 5, 1995 for "civil" contempt of an order that he deposit $2.5 million in an account controlled by the Delaware County (Pennsylvania) Court of Common Pleas, for eventual equitable distribution in a divorce action.

Mr. Chadwick's wife commenced a divorce action against him on November 23, 1992. On July 22, 1994, at

Mrs. Chadwick's request, the state trial court directed Mr. Chadwick to pay $2,500,000 in cash into a bank account under the control of the state court, presumably so the money would be available for distribution in the divorce proceeding.[1] This sum was the major part of a $2,502,000 investment made by Mr. Chadwick nearly eighteen months before the state court order under the terms of a joint venture agreement between Mr. Chadwick and Maison Blanche, Limited, a Gibraltar corporation, entered into in August, 1990. Mr. Chadwick maintains that he possesses the investment interest, but was then and still is unable to reclaim the cash.

On August 29, 1994 and again on October 31, 1994, the trial court adjudicated Mr. Chadwick in contempt of its July 22, 1994 order. By order dated November 2, 1994, the trial court directed that Mr. Chadwick be arrested and imprisoned indefinitely, "until a further hearing is held." No condition was stated upon the performance of which Mr. Chadwick would be released. It is under this order that Mr. Chadwick remains incarcerated. No trial was held and no trial by jury was offered. The record is devoid of evidence that Mr. Chadwick then had the cash resources, or any resources readily convertible into cash, that could satisfy the trial court's payment order[2]. No findings of fact or conclusions of law were filed. Mr. Chadwick appealed both the order of July 22, 1994 and the order of November 2, 1994 which directed his imprisonment, but

---

[1] The parties were granted a bifurcated divorce on November 14, 2001, but property distribution issues remain to be determined.

[2] Statements to the contrary in the opinions below are based upon the same state court factfinding challenged in the habeas corpus petition for lack of support in the evidentiary record.

the state Superior Court, at the request of Mrs. Chadwick, quashed these appeals as the orders were deemed interlocutory.

On April 5, 1995 Mr. Chadwick was arrested and imprisoned. He has remained imprisoned under the order dated November 2, 1994.

Mr. Chadwick unsuccessfully sought habeas relief in a series of petitions filed with the state court which had ordered his imprisonment. The state Superior Court affirmed the denial of habeas relief on August 22, 1996 and again on April 23, 1997. The state Supreme Court denied discretionary review on April 8, 1997, and this Court denied certiorari, *sub nom. Chadwick v. Andrews*, 522 U.S. 864 (1997). Subsequently, on February 8, 2000, the state Supreme Court denied a habeas corpus application filed under its original jurisdiction.

Mr. Chadwick sought habeas corpus relief in the U.S. District Court for the Eastern District of Pennsylvania in several applications dismissed for failure to exhaust state remedies. After the denial of habeas relief by the state Supreme Court, Mr. Chadwick, on March 2, 2000 filed a habeas corpus application with the District Court which raised nine Constitutional claims. Mr. Chadwick's wife was permitted to intervene and opposed the application. No evidentiary hearing was held. On December 11, 2000, a Magistrate Judge issued a report and recommendation which found that exhaustion of state remedies had occurred, but recommended dismissal of the petition on the merits. Mr. Chadwick filed exceptions.

On January 3, 2002 the District Court sustained Mr. Chadwick's exceptions to the report of the Magistrate Judge and granted the petition on the ground that his

imprisonment had become impermissibly punitive and thus a violation of his due process rights. After granting relief on this claim the District Court made no mention of the other claims except to state that Mr. Chadwick "is not entitled to habeas relief on any of the other grounds asserted in his petition." Mrs. Chadwick, but none of the governmental respondents, appealed to the United States Court of Appeals for the Third Circuit. The Court of Appeals on August 20, 2002 reversed the judgment of the District Court because, after applying the standards in 28 U.S.C. § 2254(d)(1), it concluded that this Court had never held that the due process clause limits the length of time a person may be confined for civil contempt and therefore the refusal of the state court to release Mr. Chadwick notwithstanding his lengthy imprisonment would not be unreasonable. *Chadwick v. Janecka*, 312 F.3d 597 (3rd Cir. 2002). This Court denied certiorari, *sub nom. Chadwick v. Chadwick*, 538 U.S. 1000 (2003). The Court of Appeals noted, however, that Mr. Chadwick could file a new habeas petition if he was unable to comply with the order which caused his imprisonment. 312 F.3d at 614.

On August 19, 2003 Mr. Chadwick filed with the District Court a new habeas corpus petition under 28 U.S.C. § 2254(a) which asserted a claim for denial of due process of law on the ground that his civil imprisonment was for "noncompliance with an order with which he was unable to comply and as to which he was not afforded a jury trial on the issue of ability to comply." The same claims had been made in the earlier habeas petition. However, Mr. Chadwick submitted that the District Court had not adjudicated these claims in the earlier proceeding. The District Court dismissed the petition on October 20, 2003 on the ground it was second or successive and that

the District Court therefore lacked jurisdiction under 28 U.S.C. 2244 (b)(1). The District Court denied a motion for reconsideration on October 30, 2003. Mr. Chadwick's motion for a certificate of appealability was denied by the District Court on December 19, 2003 on the ground that the standards set forth in *Slack v. McDaniel*, 529 U.S. 473 (2000) had not been met in view of a "plain procedural bar" to the application. (Appendix D, p. 14).

Mr. Chadwick filed a notice of appeal on December 1, 2003 and on January 7, 2004 requested the U.S. Court of Appeals for the Third Circuit to grant a Certificate of Appealability. The Court of Appeals denied the Certificate on May 25, 2004 because of the "failure to make a substantial showing of a denial of a Constitutional right." The Court of Appeals also added that "jurisdiction was lacking for the reasons given by the District Court." (Appendix A).

REASONS FOR GRANTING THE WRIT

1. CERTIORARI SHOULD BE GRANTED BECAUSE THE ORDER BELOW CONFLICTS WITH THE REASONING OF THIS COURT IN PRIOR DECISIONS WHICH PROTECT THE RIGHT OF A HABEAS CORPUS APPLICANT TO THE FULL ADJUDICATION OF EACH CONSTITUTIONAL CLAIM PRESENTED.

Where, as in the instant case a District Court dismisses a habeas petition without reaching the merits of the claims, this Court has established a two-part test which the habeas applicant must meet in order to be granted a Certificate of Appealability. First, the applicant must show "at least, that jurists of reason would find it

debatable whether the petition states a valid claim of the denial of a Constitutional right." Second, it must be shown "that jurists of reason would find it debatable whether the District Court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The instant case presents two related claims for habeas relief. The first is that the state court factual determination of Mr. Chadwick's ability to comply with the order as to which he was adjudicated in contempt and resulted in his imprisonment was not reasonably supported by the evidence presented. Secondly, Mr. Chadwick claims that he was deprived of his Sixth Amendment right to a jury trial with respect to the determination of the issue of fact.

Imprisonment based upon a factual determination unsupported by the evidence has long been accepted as a violation of the due process clause. *Townsend v. Sain*, 372 U.S. 293, 313 (1963); *Sanders v. United States*, 373 U.S. 1, 15 (1963). State factual determinations not fairly supported by the record cannot be conclusive of federal rights. *Townsend*, 372 U.S. at 310. Mr. Chadwick's claim of entitlement to a jury trial raises issues of compliance with the Sixth Amendment. In *United Mine Workers v. Bagwell*, 512 U.S. 821, 837 (1994) this Court held that a contemnor was entitled to a jury trial and the other rights of a person accused of a crime even in civil contempt where the penalty was serious in nature.

The District Court in the instant case did not suggest that Mr. Chadwick's claims in the petition failed to rise to the level of the denial of a Constitutional right. The Court of Appeals did so state, but without any explanation. It appears beyond question, however, that habeas claims of

the nature presented here – implicating due process and Sixth Amendment rights – meet the requirement of *Slack* that the denial of important Constitutional rights must be at stake. At the very least, reasonable jurists could so conclude.

The second test which *Slack* sets forth is that the correctness of the procedural ruling which dismissed the petition must be reasonably debatable. Although the Constitutional claims presented in the petition at issue had been presented in an earlier petition, Mr. Chadwick urged the court below to find that, since those claims never had been adjudicated on the merits, the instant petition did not meet the definition of "second or successive." This Court, in *Slack*, 529 U.S. at 487 and in *Stewart v. Martinez-Villareal*, 528 U.S. 637, 643 (1998) has so held. The District Court, whose conclusion was adopted by the Court of Appeals, disagreed that *Slack* and *Stewart* applied to the instant case, reasoning that such decisions excepted from the classification as second or successive only claims made in prior proceedings which were dismissed for procedural reasons (Appendix B, pp. 7-8). The District Court conclusion confines *Slack* and *Stewart* to their facts. In *Slack* the earlier petition was dismissed for failure to exhaust state remedies. In *Stewart*, the claim had been dismissed as premature although, as in the instant case, the writ was granted on other grounds, subsequently reversed. The reasoning of the decision in *Stewart*, however, strongly suggests that the ruling was not limited to habeas claims dismissed for procedural reasons, but would apply to any habeas claims not fully adjudicated in a prior proceeding. "Respondent was entitled," the opinion declares, "to an adjudication of all of the claims presented in his earlier, undoubtedly reviewable, application for federal

habeas relief." *Id.* 523 U.S. at 643. If this were not so, particularly where the court selected another claim, ultimately defeated, on which to grant the writ, a habeas appellant could be forever barred from relief on a claim never considered.

Moreover, this Court has held that the Congressional restriction on second or successive petitions is a modified *res judicata* rule, the purpose of which is to restrain an abuse of the writ. *Felker v. Turpin*, 518 U.S. 651, 664 (1996). It is difficult to imagine how the writ can be abused when, through no fault of the applicant, the court chooses not to adjudicate a habeas claim, regardless of the reasons for doing so. At the very least, reasonable jurists may disagree as to the scope of the holdings in *Slack* and *Stewart* such that a Certificate of Appealability should issue to consider that issue.

The District Court did not change its opinion on reconsideration, but included an additional reason for dismissing the writ – that the claims being presented had been adjudicated in the earlier proceeding. Mr. Chadwick submits that the treatment, or lack thereof, of the claims in the prior proceeding does not rise to the level of any acceptable definition of adjudication. Whether the District Court applied the appropriate standard to reach this conclusion is discussed below.

2. CERTIORARI SHOULD BE GRANTED TO SETTLE AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN BUT SHOULD BE DECIDED BY THIS COURT, WHICH IS THE CIRCUMSTANCES UNDER WHICH A HABEAS CLAIM SHOULD BE CONSIDERED ADJUDICATED AND THUS FORECLOSED FROM FURTHER CONSIDERATION WHERE RELIEF ULTIMATELY IS GRANTED ON AN ALTERNATE GROUND.

Mr. Chadwick's habeas claim is that the state court finding as to his ability to comply with the order as to which he was held in contempt lacked reasonable evidentiary support in the record. This claim, although presented in the earlier habeas proceeding, was not adjudicated there, first because there was no requirement to do so in order to grant relief on the ground chosen by the court, and also because the District Court, to the extent it considered this claim at all, simply relied upon the presumption of correctness of state court factfinding contained in 28 U.S.C. § 2254(e)(1). The District Court declared: "Under AEDPA, this court is bound by those determinations absent rebuttal of the presumption of state court findings by clear and convincing evidence." (Appendix E, pp. 27-28). The District Court did add that "the record below clearly demonstrates that the state court findings were not erroneous." *Id.*, p. 28. However, the footnote to that sentence (footnote 4) discloses that the District Court's statement was *not* based upon the record which underlies the state court findings of contempt. Instead, the footnote relied upon Mr. Chadwick's refusal, five years later in a habeas corpus proceeding, to consent to a finding of incompetency and the appointment of a legal guardian.

When a habeas claim challenges the factual support for the state court factfinding, an adjudication of that issue requires that the federal court examine the state court record. Reliance upon a statutory presumption is not sufficient. A presumption affords a party the luxury of *not* being required to produce specific evidence to establish the point at issue. *2 McCormick On Evidence*, § 342 at 450 (4th Ed. 1992). However, it is the absence of evidence in the first place that is the basis of the habeas claim in the instant case. Clearly, a presumption does not apply to cure its lack. Moreover, the § 2254(e)(1) presumption can apply only if the state court factfinding *is* supported by proper evidence. Thus, the statute makes clear that the failure of the state court record to support the state court factfinding is a separate ground for habeas relief. 28 U.S.C. § 2254(d)(2). If a presumption could overcome the deficiency in the evidentiary record, it would cause subsection (d)(2) to be meaningless. Over forty years ago this Court emphasized that factual support in the state court record was central to the habeas inquiry:

> "This Court has consistently held that state factual determinations not fairly supported by the record cannot be conclusive of federal rights. (citing cases) Where the fundamental liberties of the person are claimed to have been infringed, we carefully scrutinize the state court record." *Townsend*, 372 U.S. at 316.

With respect to Mr. Chadwick's habeas claim that he was not afforded a Sixth Amendment jury trial, the District Court made no mention in its opinion granting habeas relief in the prior proceeding. The opinion relied, however, upon the *Bagwell* decision, cited by Mr. Chadwick to support his jury trial claim, for other purposes. The

Magistrate Judge had rejected Mr. Chadwick's Sixth Amendment claim based upon an obvious misperception of the holding in *Bagwell*, and exceptions were taken to the District Court. The sole reference to this and other claims made in the prior proceeding, other than the one on which the District Court granted relief, was in a summary sentence at the end of the opinion: "The Court agrees with the remainder of the R&R [Magistrate Judge's Report and Recommendation] that Chadwick was not denied due process for any of the reasons alleged. . . . He is not entitled to habeas relief on any of the other grounds asserted in his petition."

A Sixth Amendment claim is a serious one, particularly since *Bagwell* had modified prior law, granting a right to a jury trial under certain circumstances in civil contempt. Where the writ is being granted, in any event, for other reasons, a discussion of this claim would not be expected. However, if relief were to be granted (or denied) based on the Sixth Amendment claim itself, a more fulsome explanation would have been required. *See Sumner v. Mata*, 449 U.S. 339, 351-2 (1981) (Under earlier version of 28 U.S.C. § 2254 which specified certain criteria for relief, a court on granting a writ was required to include the reasons relied upon.). There is nothing in the record of the prior proceeding to indicate that the Sixth Amendment claim was seriously considered, if considered at all.

Neither the due process claim based upon the insufficiency of the state court record nor the Sixth Amendment claim were addressed on appeal. The appeal was taken not by Mr. Chadwick but by his wife who urged that the District Court lacked jurisdiction to grant relief on the basis of the length of Mr. Chadwick's confinement for contempt because of the perceived lack of specific Supreme

Court precedent. As Mr. Chadwick was not the appellant, he could not control the grounds for appeal. Certainly, there should not have been an adjudication of a nature that would forever bar Mr. Chadwick from obtaining habeas relief on such claims. This should be particularly so since Mr. Chadwick was the successful party before the District Court. As such he was unable to raise on reconsideration or appeal such action as the District Court may have taken on his other claims for relief.

In the case of both Constitutional claims raised in the instant proceeding there are substantial arguments to demonstrate that no adjudication of such claims occurred in the prior proceeding. The District Court incorrectly concludes that the Court of Appeals "approved" the finding that Mr. Chadwick's ability to comply had been "adequately established" in the state court proceedings. (Appendix B, p. 7). This issue was not before the Court of Appeals. However, in its narrative description of the facts from the opinion of the District Court, the Court of Appeals, like the District Court, relied completely upon the statutory presumption of the correctness of state court factfinding, citing as authority the earlier District Court opinion itself. *Chadwick v. Janecka*, 312 F.3d at 612. This Court has recognized that habeas corpus is equitable in nature. *Kuhlmann v. Wilson*, 477 U.S. 436, 445, n. 6 (1986). In *Slack* and *Stewart* the Court held that the rigor of the second or successive statutory bar must give way to equitable considerations so long as no abuse of the writ has occurred. Certainly reliance by the District Court upon a presumption and the general dismissal without mentioning the Sixth Amendment claim should raise questions in the minds of reasonable jurists as to whether an adjudication

of these claims has occurred such as would foreclose their later consideration.

CONCLUSION

For the foregoing reasons the Petitioner respectfully prays that his Petition for a Writ of Certiorari be granted and that a Certificate of Appealability be granted to Petitioner.

Respectfully submitted,

H. BEATTY CHADWICK
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APPENDIX A

CPS-185 May 6, 2004

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

C.A. No. **03-4595**

H. BEATTY CHADWICK

vs.

JOHN DOUGLAS CAULFIELD, ET AL.

(E.D. PA. CIV. NO. 03-CV-04793)

Present: ALITO, FUENTES AND CHERTOFF, *CIRCUIT JUDGES*

Submitted is appellant's application for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above-captioned case.

Respectfully,

Clerk

MMW/LLB/ch

ORDER

The foregoing request for a certificate of appealability is denied for failure to make a substantial showing of the denial of a constitutional right. Jurisdiction was lacking for the reasons given by the District Court. *See* 28 U.S.C. § 2244(b)(1).

By the Court,

/s/ Julio M. Fuentes
Circuit Judge

Dated: May 25, 2004

CH/cc: H. Beatty Chadwick
A. Sheldon Kovach, Esq.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

H. BEATTY CHADWICK	:	**CIVIL ACTION**
v.	:	
JOHN DOUGLAS CAULFIELD, et al.	:	**NO. 03-4793**

MEMORANDUM and ORDER

(Filed Oct. 20, 2003)

Norma L. Shapiro, J.

H. Beatty Chadwick ("Chadwick") has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 to challenge his continued incarceration for civil contempt. In his petition, Chadwick argues that he has been denied due process because: (1) he was and is unable to comply with a state order of which he has been adjudged in contempt; and (2) he was denied a jury trial on the issue of his ability to comply. Chadwick contends that this is not a "second or successive petition" so it does not require permission to file from the Court of Appeals under 28 U.S.C. §2244. For the reasons stated below, Chadwick's petition is dismissed as a "successive petition."

Procedural History

This is Chadwick's sixth federal habeas petition. On April 7, 1995, Chadwick an emergency motion to quash a state court bench warrant and release him from Delaware County Prison because the state court contempt finding

was improper under state law. This court declined to intervene in a pending state court proceeding under *Younger v. Harris,* 401 U.S. 37 (1971) and progeny. *See, Chadwick v. Delaware County Court of Common Pleas,* No. 95-0103, 1995 U.S. Dist. LEXIS 5130, *1 (E.D. Pa. Apr. 19, 1995).

Chadwick had filed, and the state trial court had denied, six state petitions for habeas relief, when Chadwick appealed one of the state trial court's denials. Before the appeal was decided, Chadwick filed a second federal habeas petition; this court dismissed Chadwick's second federal habeas petition for failure to exhaust available state remedies because the issues had not yet been presented to the Pennsylvania Supreme Court. *See Chadwick v. Hill,* No. 95-0103, 1995 U.S. Dist. LEXIS 13081, *3 (E.D. Pa. Sept. 8, 1995).

Several appeals of state trial court denials of Chadwick's habeas petitions and a motion to vacate state court orders were then consolidated on appeal to the Pennsylvania Superior Court. Because of the pending appeal, this court dismissed Chadwick's third federal habeas petition for failure to exhaust available state remedies. *See Chadwick v. Hill,* No. 96-6426, 1997 U.S. Dist. LEXIS 512, *5 (E.D. Pa. Jan. 16, 1997).

On July 18, 1997, Chadwick filed his fourth federal habeas petition, alleging that his continued detention in the Delaware County Prison served a punitive purpose only so that he must be afforded due process for criminal sanctions. Because Chadwick had declined to seek available Supreme Court review of the Pennsylvania Superior Court's April 23, 1997 decision, affirming the trial court's denial of Chadwick's sixth state habeas petition, his petition was dismissed again for failure to exhaust available state

remedies. *Chadwick v. Andrews,* No. 97-4680, 1998 U.S. Dist. LEXIS 6123, *15 (E.D. Pa. Apr. 30, 1998).

On March 2, 2000, Chadwick filed his fifth federal habeas petition alleging that his imprisonment was impermissibly punitive and that he had been denied due process because: (1) he was and is unable to comply with a state court order of which he has been adjudged in contempt; (2) he was denied a jury trial and other procedural rights; (3) he was imprisoned after a summary proceeding; (4) his imprisonment has become punitive; (5) he was imprisoned for failure to pay money; (6) his civil imprisonment is indefinite; (7) the imprisonment order is facially unlawful; (8) the state court ordering the incarceration lacked jurisdiction; and (9) he was denied a prompt appeal. *H. Beatty Chadwick v. James Janecka,* No. 00-1130, 2002 U.S. Dist. LEXIS 10, *1-*2 (E.D. Pa. Jan. 3, 2002). This court, concluding that his confinement had become punitive and no longer served its coercive force, granted the petition. *Chadwick v. Janecka,* 2002 U.S. Dist. LEXIS at *22-23.

On August 20, 2002, the Court of Appeals for the Third Circuit, applying the standards set forth in 28 U.S.C. §2254(d)(1), reversed the judgment because there was no Supreme Court precedent limiting the length of time a person may be confined for civil contempt. *Chadwick v. Janecka,* 312 F.3d 597, 613 (3d Cir. 2002). The opinion stated "[o]ur decision does not preclude Chadwick from filing a new federal habeas petition if he claims that he is *unable* for some reason to comply with the state court's order." *Id.,* at 614. Relying on this language, Chadwick filed the present action on August 21, 2003.

Discussion

The Antiterrorism and Effective Death Penalty Act, 28 U.S.C. §2244(b)(1), requires that a "claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." In order to file a second or successive habeas petition, "the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. §2244(3)(a).

Chadwick alleges that the instant petition is not "second or successive" within the meaning of 28 U.S.C. §2244 because the "ground for relief was not adjudicated in the earlier habeas proceeding." He reasserts claims made in the prior habeas petition before this court: (1) he *was* unable to comply with a state court order of which he had been adjudged in contempt; and (2) he was not afforded a jury trial on the issue of ability to comply.

While reversing the grant of Chadwick's last petition, the Court of Appeals agreed with the determination that Chadwick had the present ability to comply with the state court order:

> the District Court properly proceeded on the assumption that Mr. Chadwick has the present ability to comply with the July 1994 state court order. The state courts have repeatedly so found. Under 28 U.S.C. §2254(e)(1), the District Court was bound by these state court factual determinations, absent rebuttal of the presumption of correctness by clear and convincing evidence. The District Court acknowledged that the record demonstrates that the state court findings were not erroneous, and the District Court stated that it was 'convinced that [Mr.] Chadwick has the

> present ability to comply with the July 22, 1994 order. *Chadwick v. Janecka,* 312 F.3d at 612, *citing Chadwick v. Janecka,* No. 00-1130, 2002 U.S. Dist. LEXIS 10, at *19 (E.D. Pa. Jan. 3, 2002).

Chadwick's assertion that the Court of Appeals was "convinced that the issue of Chadwick's ability to comply and the evidence, or lack thereof in support of it, had not been adjudicated by the District Court" is simply not true. *Petitioner's Memorandum in Support of Petition For Writ of Habeas Corpus,* at 9. The Court of Appeals approved the district court finding that state court orders had more than adequately established Chadwick's present ability to comply with the state court order. The Court of Appeals statement that Chadwick could file a new federal habeas petition if he claims he is unable to comply with the state court order is understood by the district court to refer to present inability to pay, based on new evidence establishing current insolvency. The petitioner complains of procedural inadequacies in determining his past ability to pay, already rejected by this court and the Court of Appeals, but he still does not allege he is actually unable to pay.

Chadwick's reliance on *Stewart v. Martinez-Villareal,* 523 U.S. 637 (1998), and the related case *Slack v. McDaniel,* 529 U.S. 473 (2000) is misguided. Where a habeas petition has been dismissed by the district court without prejudice as premature (*Stewart*) or unexhausted (*Slack*) and then refiled once the claim became ripe for adjudication, the later petition is not new since the merits of the claim had never been reviewed by a federal court. *Stewart,* 523 U.S. at 645; *Slack,* 529 U.S. at 490.

The instant petition is not similarly procedurally situated. The *Stewart* and *Slack* courts made clear that their holdings only applied to claims which had been

dismissed for procedural reasons. *Stewart,* 523 U.S. at 645, *Slack,* 529 U.S. at 487. In this Circuit, both *Stewart* and *Slack* have only been applied to petitions dismissed for purely technical procedural reasons, and not substantive deficiencies of the claim. *See Harris v. United States,* No. 02-6825, 2002 U.S. Dist. LEXIS 24439 *10-*11 (E.D. Pa. Dec. 20, 2002); *Bouie v. Varner,* No. 00-4846, 2002 U.S. Dist. LEXIS 8132, *7, n.3 (E.D. Pa. May 7, 2002).

Unlike *Stewart* and *Slack,* Chadwick's instant claims were not dismissed for technical procedural reasons such as exhaustion or ripeness. Rather, this court agreed with the Report and Recommendation of Magistrate Judge Rapoport that, "Chadwick was not denied due process for any of the reasons alleged . . . [and] he is not entitled to habeas relief on any of the other grounds asserted in his petition." *Chadwick v. Janecka,* No. 00-1130, at *25. The court was not required to articulate its reasoning for its denial, and its failure to do so does not determine that the claims were not adjudicated by the district court; they are barred by 28 U.S.C. §2244 without permission to proceed from the Court of Appeals.

Conclusion

Chadwick's petition for a writ of habeas corpus is dismissed. The petition is a "second or successive" petition within the meaning of 28 U.S.C. §2244. Under the procedural requirements of 28 U.S.C. §2244(3)(a), Chadwick must petition the Court of Appeals for the Third Circuit for leave to file this petition.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

H. BEATTY CHADWICK	:	**CIVIL ACTION**
v.	:	
JOHN DOUGLAS CAULFIELD, et al.	:	**NO. 03-4793**

ORDER

Norma L. Shapiro, J. **October 20, 2003**

AND NOW, this 20th day of October, 2003, upon careful and independent consideration of the petition for writ of habeas corpus, it is hereby **ORDERED** that:

Petitioner's Petition for Habeas Corpus is **DISMISSED** for lack of jurisdiction. 28 U.S.C. §2244(3)(a).

/s/ Norma L. Shapiro

S.J.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

H. BEATTY CHADWICK	:	
v.	:	CIVIL ACTION
JOHN DOUGLAS CAULFIELD, et al.	:	NO. 03-4793

ORDER

(Filed Oct. 31, 2003)

AND NOW, this 30th day of October, 2003, upon consideration of petitioner's Motion for Reconsideration, it is hereby ORDERED that:

1. The motion is **DENIED**. The Petition for Writ of Habeas Corpus is "second or successive" within the meaning of 28 U.S.C. §2244(b) (1). As explained in the court's order dated October 20, 2003, Chadwick's present claim has already been adjudicated by this court. *Chadwick v. Janecka*, No. 00-1130, 2002 U.S. Dist. LEXIS 10, at *25 (E.D. Pa. Jan. 3, 2002).

2. The court's order of October 20, 2003 is **AMENDED** to read "Petitioner's Petition for Habeas Corpus is **DISMISSED** for lack of jurisdiction. U.S.C. § 2244(b) (1)."

3. Because the petitioner contends that his petition is not "second or successive" within the meaning of 28 U.S.C. §2244(b) (2), pursuant to 28 U.S.C. §2244(b) (3) (A), he may apply to the Court of Appeals for an order authorizing the district court to consider his petition.

/s/ Norma L. Shapiro
Norma L. Shapiro
United States District
Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

H. BEATTY CHADWICK	:	
	:	
v.	:	**CIVIL ACTION**
	:	**NO. 03-4793**
JOHN DOUGLAS CAULFIELD, et al.	:	
	:	

ORDER

(Filed Dec. 19, 2003)

AND NOW, this 19th day of December, 2003, upon consideration of petitioner's Motion for Certificate of Appealability, and it appearing that:

a) On March 2, 2000, Chadwick filed his fifth federal habeas petition alleging that his imprisonment was impermissibly punitive and that he had been denied due process because: (1) he was and is unable to comply with a state court order of which he has been adjudged in contempt; (2) he was denied a jury trial and other procedural rights; (3) he was imprisoned after a summary proceeding; (4) his imprisonment has become punitive; (5) he was imprisoned for failure to pay money; (6) his civil imprisonment is indefinite; (7) the imprisonment order is facially unlawful; (8) the state court ordering the incarceration lacked jurisdiction; and (9) he was denied a prompt appeal. *H. Beatty Chadwick v. James Janecka*, No. 00-1130, 2002 U.S. Dist. LEXIS 10, *1-*2 (E.D. Pa. Jan. 3, 2002). This court, concluding that his confinement had become punitive and no longer served its coercive force, granted the petition. *Id.* at *22-23;

b) On August 20, 2002, the Court of Appeals for the Third Circuit, applying the standards set forth in 28 U.S.C. § 2254(d) (1), reversed the judgment because there was no Supreme Court precedent limiting the length of time a person may be confined for civil contempt. *Chadwick v. Janecka*, 312 F.3d 597, 613 (3d Cir. 2002). The opinion stated "[o]ur decision does not preclude Chadwick from filing a new federal habeas petition if he claims that he is *unable* for some reason to comply with the state court's order." *Id.*, at 614. Relying on this language, Chadwick filed a sixth habeas petition on August 21, 2003;

c) In the sixth petition, Chadwick argued that he has been denied due process because: (1) he was and is unable to comply with a state order of which he has been adjudged in contempt; and (2) he was denied a jury trial on the issue of his ability to comply. Finding these claims had already been adjudicated in this court's consideration of Chadwick's fifth habeas petition, by Memorandum and Order of October 20, 2003, Chadwick's petition for a writ of habeas corpus was dismissed as "second or successive" within the meaning of 28 U.S.C. § 2244; *Chadwick v. Caulfield*, 03-4793 (E.D. Pa. Oct. 20, 2003) (Memorandum and Order dismissing petition).

d) On October 30, 2003, Chadwick filed a motion for reconsideration; by order of October 31, 2003, Chadwick's motion for reconsideration was denied. *Chadwick v. Caulfield*, 03-4793 (E.D. Pa. Oct. 31, 2003) (Order denying motion for reconsideration).

e) On November 17, 2003, Chadwick filed the instant motion for certificate of appealability;

It is hereby **ORDERED** that Petitioner's Motion for Certificate of Appealability is **DENIED** because:

1. A certificate of appealability may issue only if "the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c);

2. When a federal court denies a habeas petition on procedural grounds without reaching the underlying constitutional claim, the prisoner must demonstrate that reasonable jurists would find debatable: (1) whether the petition states a valid claim of the denial of a constitutional right; and (2) whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." *Id.*

3. The denial of this motion for certificate of appealability is without prejudice to Chadwick's ability to make a motion for a certificate of appealability with the Court of Appeals.

/s/ Norma L. Shapiro
Norma L. Shapiro, S.J.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

H. BEATTY CHADWICK	:	CIVIL ACTION
v.	:	
JAMES JANECKA	:	NO. 00-1130

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J. **January 3, 2002**

Petitioner H. Beatty Chadwick, Esq.[1] ("Chadwick"), filing a petition for writ of habeas corpus under 28 U.S.C. § 2254, challenges his continued incarceration for civil contempt. In his petition, Chadwick argues that his imprisonment is impermissibly punitive and he has been denied due process because: (1) he was and is unable to comply with a state court order of which he has been adjudged contemptuous; (2) he was denied a jury trial and other procedural rights; (3) he was imprisoned after a summary proceeding; (4) his imprisonment has become punitive; (5) he was imprisoned for failure to pay money; (6) his civil imprisonment is indefinite; (7) the imprisonment order is facially unlawful; (8) the state court ordering the incarceration lacked jurisdiction; and (9) he was denied a prompt appeal.

United States Magistrate Judge Arnold C. Rapoport issued a Report and Recommendation ("R & R") to deny and dismiss the petition without an evidentiary hearing and find no probable cause to issue a certificate of appealability.

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[1] Chadwick is an inactive member of the Pennsylvania Bar.

Petitioner filed objections and Barbara Jean Crowther Chadwick ("Ms. Chadwick"), petitioner's estranged wife and the Intervenor in this action, filed a motion to dismiss Chadwick's petition. For the reasons stated herein, the motion to dismiss will be denied and after *de novo* consideration of Chadwick's petition, the petition for writ of habeas corpus will be granted.

BACKGROUND

Ms. Chadwick filed a divorce action in the Delaware County Court of Common Pleas in November, 1992. During an equitable distribution conference in February, 1993, Chadwick informed the state court and Ms. Chadwick he had transferred $2,502,000 of the marital estate to satisfy an alleged debt to Maison Blanche, Ltd. ("Maison Blanche"), a Gibraltar partnership. *See Chadwick v. Chadwick,* No. 1555 Philadelphia 1995 at 2 (Pa. Super. Ct. Aug. 22, 1996) ("*Chadwick I*"). Ms. Chadwick had no knowledge of any debt owed by Chadwick to Maison Blanche.

After hiring a private investigator and further discovery, Ms. Chadwick determined: (1) one of the principals of Maison Blanche returned $869,106.00 from Gibraltar to an American bank account in Chadwick's name, and the funds were used to purchase three annuity contracts; (2) $995,726.41 had been transferred to a Union Bank account in Switzerland in Chadwick's name; and (3) $550,000.00 in stock certificates Chadwick claimed he had transferred to an unknown barrister in England to forward to Maison Blanche were never received. *Id.* at 3; *Chadwick v. Hill,* No. 2192 Philadelphia 1996 at 2 n.1 (Pa. Super. Ct. Apr. 23, 1997) ("*Chadwick II*"). The state court

entered a freeze order on the marital assets on April 29, 1994.

In May, 1994, Chadwick redeemed the annuity contracts and deposited the funds in a Panamanian bank. *See Chadwick II,* at 2 n.1. On July 22, 1994, the state court held a hearing at which Chadwick and his counsel were present. After hearing testimony regarding disposition of the $2,502,000.00 sent to Gibraltar, the court determined Chadwick's transfer of the money was an attempt to defraud Ms. Chadwick and the court. On the day of the hearing, the court ordered Chadwick to return the $2,502,000.00 to an account under the jurisdiction of the court, pay $75,000.00 for Ms. Chadwick's attorney's fees and costs, surrender his passport and remain within the jurisdiction. *See id.* at 3.

Chadwick refused to comply with the July 22, 1994 order; Ms. Chadwick filed a petition for contempt. The state court held contempt hearings on August 29, 1994, October 18, 1994, and October 31, 1994. Chadwick failed to appear at any of the hearings, but his attorney was present. *See id.* The state court found Chadwick in contempt of the July 22, 1994 order and issued a bench warrant for his arrest.

Chadwick, learning a bench warrant had been issued, fled the jurisdiction but was arrested and detained on April 5, 1995. The state court then determined Chadwick had the present ability to comply with the terms of the July 22, 1994 order and set bail at $3,000,000.00. *See Chadwick I,* at 4. Chadwick could have been released from custody at any time either by posting bail or purging his contempt by compliance with the July 22, 1994 order to

deposit $2,502,000.00 in the court's account; to date, he has done neither.

On April 7, 1995, Chadwick filed in federal court an emergency motion to quash the state court bench warrant and release him from Delaware County Prison because the contempt finding was improper under state law. This court declined to intervene in a pending state court proceeding under *Younger v. Harris,* 401 U.S. 37 (1971) and progeny. *See Chadwick v. Delaware County Court of Common Pleas,* No. 95-0103, 1995 WL 232500, at *2 (E.D. Pa. Apr. 19, 1995).

Chadwick has filed six state petitions for habeas relief; the trial court denied them all. He appealed one denial and his latest denial was subject to appeal, but before the appeals were decided, Chadwick filed a second federal habeas petition; this court dismissed the second federal habeas petition for failure to exhaust available state remedies because the issues had not yet been presented to the Pennsylvania Supreme Court. *See Chadwick v. Hill,* No. 95-0103, 1995 WL 541794, at *1 (E.D. Pa. Sept. 8, 1995).

Several appeals of state trial court denials of his habeas petitions and a motion to vacate state court orders were consolidated on appeal. The Pennsylvania Superior Court, affirming the lower court decisions in August, 1996, found that he was able to comply with the July, 1994 Order. *See Chadwick I.* The Superior Court held that: (1) the trial court had jurisdiction to find Chadwick in contempt; (2) the procedure used by the trial court in the contempt proceedings was not improper; (3) the trial court did not err in adjudicating Chadwick in contempt; (4) state statutory provisions governing criminal contempt were

inapplicable; (5) Chadwick was not illegally incarcerated; and (6) Chadwick's incarceration had not ceased to be coercive in nature. *Id.* Chadwick's petition for allowance of appeal to the Supreme Court of Pennsylvania was denied on April 8, 1997.

Chadwick's sixth petition for state habeas relief argued that his continued confinement deprived him of due process because it had become punitive rather than coercive; it was denied by the trial court on June 21, 1996. While appealing that determination, Chadwick filed a third federal habeas petition on September 23, 1996. By Memorandum and Order dated January 16, 1997, this court dismissed Chadwick's third federal habeas petition for failure to exhaust available state remedies and abstained because of the pending appeal to the Superior Court. *See Chadwick v. Hill,* No. 96-6426, 1997 WL 22406, at *2 (E.D. Pa. Jan. 16, 1997).

The Pennsylvania Superior Court affirmed the trial court's denial of Chadwick's sixth state habeas petition by Opinion dated April 23, 1997. *See Chadwick II.* The court encouraged the Supreme Court of Pennsylvania to review its decision to clarify the point at which a coercive penalty for civil contempt becomes a criminal sanction requiring due process under federal and state law. *See id.* at 6 (it "is for our high court to make such a determination.").

Chadwick did not seek review by the Pennsylvania Supreme Court, but instead sought reconsideration of this court's January 16, 1997 decision dismissing his federal habeas petition for non-exhaustion of state remedies. This court, finding the Superior Court specifically "invited" the Pennsylvania Supreme Court to review its decision and that Chadwick had not yet presented his due process

claims to the Supreme Court for review, denied Chadwick's motion for reconsideration on May 23, 1997. The court held that "the question of when civil contempt becomes punitive is one which a federal court should abstain from considering before the state supreme court has had the opportunity." May 23, 1997 Order at ¶ 10.

Chadwick declined to seek Supreme Court review of the Superior Court's April 23, 1997 decision. Instead, Chadwick filed his fourth federal habeas petition on July 18, 1997. He argued his continued detention in the Delaware County Prison served only a punitive purpose so that he was no longer imprisoned for civil contempt and must be afforded the protections and procedures obligatory for criminal sanctions. That petition was dismissed for failure to exhaust available state remedies on April 30, 1998. *See Chadwick v. Andrews,* No. 97-4680, 1998 WL 218026 (E.D. Pa. Apr. 30, 1998).

In September, 1999, Chadwick, filing a *pro se* Application for Leave to File Original Process (his seventh state habeas petition) with the Supreme Court of Pennsylvania, asserted, *inter alia,* that he had been denied due process of law and his continued incarceration had ceased to be coercive but was punitive. This request was granted on February 8, 2000; the petition for habeas corpus was summarily denied on the same date. Chadwick had also filed a petition for release in the Delaware Court of Common Pleas on the ground that he was suffering from "major psychological depression," and unable to participate in his divorce proceedings. After a hearing, on September 22, 1999, the state court trial judge was "convinced that Mr. Chadwick is feigning mental illness in an effort to be released from prison without returning the $2,500,000 which he transferred out of this country." *Chadwick v.*

Chadwick, No. 92-19535, slip op. at 4 (Ct. Com. Pl., Del. Cty., Pa. Sept. 22, 1999).

On March 2, 2000, Chadwick filed this, his fifth federal habeas petition. On December 8, 2000, Judge Rapoport issued an R & R to which Chadwick filed timely objections.

On April 4, 2001, Chadwick filed his eighth state court habeas petition. A hearing on the petition was held on April 11, 2001, at the conclusion of which the petition was dismissed. Because Chadwick may now appeal that dismissal, on April 18, 2000, Ms. Chadwick filed a motion to dismiss Chadwick's fifth federal habeas petition for failure to exhaust state court remedies.

A hearing was held on April 20, 2001, at which both Chadwick and Ms. Chadwick were heard on Chadwick's fifth federal habeas petition and Ms. Chadwick's motion to dismiss. For the reasons set forth herein, the Intervenor's motion to dismiss will be denied and the petition for habeas corpus will be granted.

DISCUSSION

I. Motion to Dismiss

"An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State. . . . " 28 U.S.C.A. § 2254(b)(1)(A) (West 1994 & Supp. 2001). *See also Duckworth v. Serrano,* 454 U.S. 1, 3 (1981); *Roberts v. LaVallee,* 389 U.S. 40, 42 (1967); *Codispoti v. Howard,* 589 F.2d 135, 140 (3d Cir. 1978). The exhaustion requirement is not met if the

petitioner "has the right under the law of the State to raise, by any available procedure, the question presented." 28 U.S.C.A. § 2254(c) (West 1994 & Supp. 2001). The exhaustion requirement has been met when the petitioner has presented his claims to the highest state court; there is no requirement that the state courts consider or discuss the claims. *See Swanger v. Zimmerman,* 750 F.2d 291, 295 (3d Cir. 1984).

A petitioner need only seek state court review of a federal claim once, either on direct review or in a state habeas proceeding; repeated review is not necessary to satisfy the exhaustion requirement. *See Duckworth v. Serrano,* 454 U.S. 1, 4 n.1 (1981) ("repetitious applications to state courts" not required); *Codispoti v. Howard,* 589 F.2d 135, 142 (3d Cir. 1978) (same).

Chadwick's seventh state habeas petition, a direct appeal to the Supreme Court of Pennsylvania, presented the following issues: (1) Chadwick's imprisonment for failure to comply with a court order was contrary to due process because he was unable to comply with the order; (2) Chadwick was incarcerated without a jury trial or the presumption of innocence, contrary to due process; (3) the summary nature of the contempt proceedings deprived Chadwick of due process; (4) the order of imprisonment was facially invalid because it failed to specify a condition upon the fulfillment of which Chadwick's imprisonment would terminate; (5) the denial of Chadwick's right to appeal the adjudication of contempt and sanction of imprisonment violated his due process rights; (6) imprisonment for the nonpayment of money was a deprivation of due process; (7) civil confinement in excess of 50 months is a deprivation of due process; (8) imprisonment for violation of a court order issued without jurisdiction was a

deprivation of due process; and (9) Chadwick's imprisonment was and still is punitive rather than coercive. These are the same issues raised in the petition presently before this court. Because the issues have now been presented to the highest state court, they have been exhausted. *See Swanger,* 750 F.2d at 295 ("[t]he exhaustion requirement . . . has been judicially interpreted to mean that claims must have been presented to the state courts; they need not have been considered or discussed by those courts."). Intervenor's motion to dismiss for failure to exhaust available state remedies will be denied.

II. Chadwick's *Habeas Corpus* Petition

A. Standard of Review

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2254, requires a federal court considering a habeas petition to afford state court determinations great deference. Habeas petitions filed since the enactment of AEDPA require a two-step analysis. *Matteo v. Superintendent, SCI Albion,* 171 F.3d 877, 891 (3d Cir. 1999) (en banc), *cert. denied, Matteo v. Brennan,* 528 U.S. 824 (1999). First, the federal court must determine whether the state court's decision was contrary to Supreme Court precedent. *Id.* Second, if the state court's decision was not contrary to Supreme Court precedent, the court must determine whether the state court decision represents an unreasonable application of Supreme Court precedent. *Id.*

B. Chadwick's Continued Imprisonment Represents an Unreasonable Application of Supreme Court Precedent: It Has Lost Its Coercive Effect and Is Now Impermissibly Punitive

Magistrate Judge Rapoport was of the opinion that Chadwick's imprisonment (now eighty months in duration) is still not impermissibly punitive. R & R at 31. Chadwick, objecting, argues that Judge Rapoport should have relied on *In re Grand Jury Investigation,* 600 F.2d 420 (3d Cir. 1979) (civil contempt is only permissible as long as it has coercive effect).

1. *Civil vs. Criminal Contempt*

Imprisonment until the incarcerated party performs a required act he or she has refused to perform is civil in nature; imprisonment for a definite term as punishment for doing a forbidden act is criminal in nature. *Gompers v. Buck's Stove & Range Co.,* 221 U.S. 418, 443 (1911) (reversing contempt sanctions of incarceration ranging from six to twelve months for violating an injunction; criminal sanctions could not be imposed in a civil proceeding). *See also International Union, United Mine Workers v. Bagwell,* 512 U.S. 821, 826-27 (1984).

Civil confinement

> is ordered where the defendant has refused to do an affirmative act required by the provisions of an order which, in either form or substance, was mandatory in its character. Imprisonment in such cases is not inflicted as a punishment, but is intended to be remedial by coercing the defendant to do what he refused to do. The decree in such cases is that the defendant stand committed

> unless or until he performs his affirmative act required by the court's order.

Gompers, 221 U.S. at 442. *See also Bagwell,* 512 U.S. at 827. Civil contempt sanctions can become punitive over time, if the coercive force has been lost. *See In re Grand Jury Investigation,* 600 F.2d at 423.

Chadwick's argument is that the length of his imprisonment has transformed the Delaware County Court's contempt sanction from coercive to punitive; the six and a half years he has spent in prison belie the assertion that continued incarceration will coerce him to comply with the court's order. The state courts, presented with this argument, have disagreed.

Judge Rapoport, relying on dicta in *Bagwell,* also disagreed. In *Bagwell,* contempt fines totaling over $64 million were levied against a mine workers' union for violation of an injunction. The Court determined this sanction was criminal in nature because the fines were meant to be punitive and vindicate the court's authority. *Bagwell,* 512 U.S. at 828, 838.

To illustrate the punitive nature of the sanction imposed on the union, the *Bagwell* Court contrasted it with the "paradigmatic" civil contempt sanction: incarceration of a contemnor indefinitely until affirmative compliance with a court order to pay alimony or surrender property. *Id.* at 828. The contempt sanction imposed on Chadwick is such a "paradigmatic" sanction for civil contempt. Chadwick's incarceration was imposed to coerce his compliance with a court order to deposit marital funds with the court. The duration of his confinement has been entirely in Chadwick's hands; complying with the court

order is the key to the jailhouse door. *See Gompers,* 221 U.S. at 442; *Bagwell,* 512 U.S. at 844.

Chadwick argues that even if his incarceration were initially civil in nature, it has since become punitive. He relies on *In re Grand Jury Investigation,* where a prisoner, brought before a grand jury, refused to testify. For this refusal, he was held in civil contempt. The presiding judge ordered him confined until he agreed to testify; the duration of his imprisonment was not to exceed the term of the grand jury or eighteen months. The sentence under which he had been incarcerated was suspended during that period. The contemnor, seeking release from civil confinement after only three months, argued there was no substantial likelihood he would ever testify before the grand jury; his request for an evidentiary hearing to prove this was denied.

On appeal, the court explained that "[s]ince it is impossible to succeed in coercing that which is beyond a person's power to perform, continued incarceration for civil contempt 'depends upon the ability of the contemnor to comply with the court's order.'" *In re Grand Jury Investigation,* 600 F.2d at 423 (quoting *Maggio v. Zeitz,* 333 U.S. 56, 76 (1948)). Confinement for coercive purposes becomes punitive once the coercive force is lost. *Id.*

The court held that the defiant witness' history of silence was insufficient to show that the sanction had lost its coercive force; there was still a chance he would change his mind and decide to testify before the grand jury. *Id.* at 428. "[T]he civil contempt power would be completely eviscerated were a defiant witness able to secure his release merely by boldly asserting that he will never comply with the court's order." *Id.* at 425. His three

months of confinement had not lost its coercive force and become punitive in nature. The court did not terminate his confinement.

The maximum amount of time the defiant witness in *In re Grand Jury Investigation* would have had to spend incarcerated for his civil contempt was only eighteen months; there was a certain end to the sanction imposed. Chadwick's incarceration is indefinite in duration. The difficulty lies in the determination when coercive imprisonment actually ceases to be coercive and becomes punitive; no clear line exists. The Supreme Court of Pennsylvania has declined to rule on this issue and the United States Supreme Court has not pronounced an exact measure.

The duration of Chadwick's incarceration has always been up to him; compliance with the state court order would guarantee his release. Chadwick disagrees; he argues: (1) he does not have the present ability to comply, so his incarceration is indefinite; and (2) even if he did have the ability to comply, the six years and four months he has spent in prison for his failure to comply strongly suggests that further incarceration will have no coercive effect. Chadwick contends the line between coercive and punitive imprisonment has been crossed.

State courts have repeatedly found that Chadwick has the present ability to comply with the order to remit marital assets to a court escrow account for equitable distribution.[2] Under AEDPA, this court is bound by those

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[2] Judge Joseph Battle had found on at least three occasions that Chadwick had the present ability to comply. *See Chadwick v. Chadwick,*

(Continued on following page)

determinations absent rebuttal of the presumption of correctness of state court findings by clear and convincing evidence. *See* 28 U.S.C.A. § 2254(e)(1) (West 1994 & Supp. 2001).[3] The record below clearly demonstrates that the state court findings were not erroneous.[4] This court is

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No. 92-19535, slip op. at 4, 5 (Ct. Com. Pl., Del. Cty., Pa. Sept. 22, 1999) (Chadwick feigning mental illness in effort to be released without remitting the marital funds; his refusal to sign authorizations to allow third parties to trace the funds establishes he still has control over them); *Chadwick v. Hill,* No. 96-6154, slip op. at 3 (Ct. Com. Pl., Del. Cty., Pa. June 21, 1996) ("As stated in two previous opinions . . . , this court has found [Chadwick's] testimony, that he did not have control of the disputed funds or knowledge of the whereabouts of the disputed funds, to be incredible;" he could comply and may still comply); *Chadwick v. Hill,* No. 95-80202, slip op. at 8 (Ct. Com. Pl., Del. Cty., Pa., Sept. 20, 1995) ("It is abundantly clear that [Chadwick] still has control over the disputed marital funds and certainly has the ability to comply with [the] July 22, 1994 order.").

The Superior Court has also found that Chadwick has the ability to comply. *See Chadwick v. Hill,* No. 96-19535, slip op. at 6 (Pa. Super. Ct. Apr. 23, 1997) ("After careful review, we would agree that the record supports the trial court's conclusion that [Chadwick] not only has the present ability to comply but also that there is a realistic possibility that he will comply with the order."); *Chadwick v. Chadwick,* Nos. 95-1555, 95-3612, 95-3773, 96-963, slip op. at 12 (Pa. Super. Ct. Aug. 22, 1996) ("Because [Chadwick] clearly holds the keys to the jailhouse door, we find that the sanctions imposed on him have not lost their coercive effect.").

[3] This subsection of the AEDPA states: "In a proceeding instituted by a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C.A. § 2254(e)(1).

[4] As recently as April 11, 2001, Judge Kenneth A. Clouse suggested a compromise: former President Judge Francis J. Catania would be appointed as Chadwick's guardian to trace the assets at issue. Chadwick would cooperate with former Judge Catania by providing him with all information and materials necessary to effectuate the search.

(Continued on following page)

convinced that Chadwick has the present ability to comply with the July 22, 1994 order.

After what is now nearly seven years' incarceration for failure to comply, there is a serious question whether confinement is still serving a coercive purpose. After this significant period of time, there exists more than Chadwick's mere assertion that further confinement will not coerce compliance. *See In re Grand Jury Investigation,* 600 F.2d at 425. The state courts have repeatedly determined that Chadwick's incarceration has not lost its coercive force.[5] This court must determine whether that

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Once former Judge Catania certified that Chadwick had cooperated and he had all the information necessary to conclude the investigation, Chadwick would be released. Chadwick refused this compromise; he would not agree unless his release were contingent only upon his delivering the requested documents to former Judge Catania. *See Chadwick v. Chadwick,* No. 92-19535, April 11, 2001 Hearing, Tr. at 4, 8.

Twice in August, 1995, Chadwick declined to provide authorization to allow third parties to investigate his assets or to allow the IRS to release his 1993 tax return. *See Chadwick v. Hill,* No. 95-80160, August 17, 1995 Hearing, Tr. at 74; *Chadwick v. Hill,* No. 95-80160, August 8, 1995 Hearing, Tr. at 22-23.

Chadwick's refusals to allow investigation of the funds without his release from custody suggests that he is concerned the assets will be found; if he is released upon signing authorizations, he could locate and secrete the assets, prevent them from being found and remitted to the court. He prefers to remain incarcerated rather than allow his former wife to receive an equitable allotment of the marital assets. This suggests that Chadwick will continue to do all in his power to keep that money hidden and beyond the jurisdiction of the Delaware County Court.

[5] After Chadwick had been incarcerated for five months, Judge Joseph Battle held that the contempt sanction imposed was civil in nature; Chadwick was jailed for failure to pay a debt. *See Chadwick v. Hill,* No. 95-80202, slip op. At 9 (Ct. Com. Pl., Del. Cty., Pa. Sept. 20,

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conclusion is contrary to Supreme Court precedent, and if not, whether it is an unreasonable application of Supreme Court precedent.

If, as Chadwick contends, the confinement has lost its coercive force, it has become punitive. *See In re Grand Jury Investigation,* 600 F.2d at 423-24. The burden is on Chadwick to show that there is no "substantial likelihood" that compliance will be the result of continued incarceration. *Id.* at 425. His obstinacy during more than six and half years of imprisonment is persuasive that Chadwick will never voluntarily deposit the disputed funds with the court; it seems clear he is willing to remain incarcerated for life rather than allow his ex-wife access to a share of the funds.

The state court conclusions on this issue on at least five occasions, from five months after his confinement until the Pennsylvania Supreme Court's summary denial

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1995). Nine months later, Judge Battle held that "the coercive sanctions imposed may yet cause [Chadwick] to ultimately comply with [the] July 22, 1994 order and therefore, [Chadwick's] contempt is not punitive in nature. . . . " *Chadwick v. Hill,* No. 96-6154, slip op. At 5 (Ct. Com. Pl., Del. Cty., Pa. June 21, 1996). Two months after that, the Superior Court found that "the sanctions imposed on [Chadwick] have not lost their coercive effect." *Chadwick v. Chadwick,* Nos. 95-1555, 95-3612, 95-3773, 96-963, slip op. At 12 (Pa. Super. Ct. Aug. 22, 1996). After Chadwick had been incarcerated for over two years, the Superior Court still found the contempt was coercive in nature, holding that "there is a realistic possibility that [Chadwick] will comply with the order." *Chadwick v. Hill,* No. 96-19535, slip op. at 6 (Pa. Super. Ct. Apr. 23, 1997). The Pennsylvania Supreme Court's summary denial of Chadwick's petition for writ of habeas corpus after Chadwick had been incarcerated for almost five years implies that it, too, considered the imprisonment still coercive in nature. *See Chadwick v. Goldberg,* No. 99-223, Order (Pa. Feb. 9, 2000).

after he had been imprisoned for almost five years, were not contrary to Supreme Court precedent; no bright line rule exists for making such a determination. The Pennsylvania Supreme Court's summary denial in February, 2000, implies its conclusion that the confinement had not then crossed the line from coercive to punitive, but without an explanation of the denial, this court does not know why.

Now, after nearly seven years, it is no longer reasonable to conclude Chadwick's continued confinement might still result in compliance with the July 22, 1994 order. Chadwick's continued incarceration cannot be rationalized under *Gompers* or *Bagwell* in light of Chadwick's clear and convincing proof there is no "substantial likelihood" that his remaining in custody will result in his compliance; his confinement, no longer coercive, is an unreasonable application of Supreme Court precedent.

2. *Due Process*

The protracted duration of his incarceration could not have been foreseen by the state court when civil confinement was imposed. The state contempt proceedings were adequate for the imposition of a civil sanction to coerce compliance. However, after such an extensive time period, Chadwick cannot remain incarcerated without the due process attendant to imposition of criminal sanctions.[6] As the Supreme Court recently held,

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[6] The full panoply of procedural protections attendant to an allegation of criminal conduct apply. An alleged criminal contemnor is entitled to counsel and proof of contempt beyond a reasonable doubt; if the sanction involves more than six months' incarceration, the alleged

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> The Fifth Amendment's Due Process Clause forbids the Government to 'deprive' any 'person . . . of . . . liberty . . . without due process of law.' Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects. And . . . government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint.

See Zadvydas v. Davis, 121 S.Ct. 2491, 2498-99 (2001) (holding an alien may be held pending deportation by the Immigration and Naturalization Service under 8 U.S.C. § 1231 for up to six months, but not indefinitely, without the due process of law afforded in a criminal proceeding) (internal citations omitted). There is no such special justification in this case. Nothing excuses Chadwick's continued defiance of a court order, but his incarceration has crossed the line from coercive to punitive and Constitutional requirements of due process compel his release.

Although Chadwick may not remain incarcerated without due process, his intractability should not be permitted to thwart the authority of a valid court order. The Delaware County Court is not without the power to

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contemnor has the right to trial by jury. *See Bagwell,* 512 U.S. at 826-27, 834.

institute criminal proceedings against Chadwick (such as a perjury or criminal contempt prosecution). *See In re Grand Jury Investigation,* 600 F.2d at 425.

II. Remaining Grounds For *Habeas* Relief

The court agrees with the remainder of the R & R that Chadwick was not denied due process for any of the reasons alleged and that the state law-based claims are not subject to federal habeas review; he is not entitled to habeas relief on any of the other grounds asserted in his petition.

CONCLUSION

Intervenor's motion to dismiss for failure to exhaust available state remedies is denied. Chadwick has previously presented his current claims to the Supreme Court of Pennsylvania; the fact that he can now appeal the state court's most recent April 11, 2001 denial of his eighth state habeas petition is not an impediment to federal habeas review.

For eighty months, Chadwick has refused to comply with a valid state court order to deposit $2,500,000.00 in marital assets with the court; this renders unreasonable the belief that continued incarceration will have a coercive effect. Chadwick has the present ability to comply, but the duration of his imprisonment has crossed the line from coercive to punitive, and requires his release. Chadwick

should be afforded due process in any proceeding to impose additional criminal sanctions.

An appropriate Order follows.[7]

[7] The government does not need a certificate under 28 U.S.C. § 2253(c)(1) to appeal this decision. *United States ex rel. Tillery v. Cavell*, 294 F.2d 12, 15 (3d Cir. 1961) ("The requirement that a certificate issue before an appeal could be taken was plainly a device to reduce appeals from decisions in favor of states or their officers not their appeals from decisions against them.") The rationale of *Tillery* applies equally to Ms. Chadwick as Intervenor: since petitioner prevails, the court need not issue a § 2253(c)(1) certificate before Ms. Chadwick may take an appeal.